

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 859 of 2014

Date of Decision: 28.04.2016

Saroj Kumari

... Petitioner(s)

Versus

Balwant Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

- | | | |
|----|---|------------|
| 1. | Whether reporters of local newspapers may be allowed to see judgment? | Yes |
| 2 | To be referred to reporters or not? | |
| 3 | Whether the judgment should be reported in the Digest? | Yes |

Present: Mr. Parambir Singh, Advocate
for the petitioner(s).

Mr. Amit Kohar, Advocate
for respondents No.1 & 2.

Shekher Dhawan, J.

Present petition is challenge to the order dated 6.1.2014, passed by learned Civil Judge (Senior Division), Ludhiana, whereby application filed by the petitioner under Order 9 Rule 7 CPC for setting aside the *ex parte* proceedings dated 24.4.1978, passed against defendant No.5-Surjit Kaur has been wrongly and illegally declined.

Learned counsel for the petitioner, while assailing the order, submitted that originally Balwant Singh had filed suit against his

father and *Bhabi* Smt. Surjit Kaur challenging transfer of property in favour of Smt. Surjit Kaur. On 27.3.1978, Surjit Kaur sold the property and thereafter she was proceeded against *ex parte*. Manjit Singh purchased the property from Surjit Kaur. Lateron, suit filed by Balwant Singh was dismissed in the year 1978 as the firm was not registered. Balwant Singh preferred first appeal before this Court and the case was remanded back with the direction to record the findings on issue No.6 afresh. Manjit Singh was not impleaded as party. Although, Balwant Singh was having knowledge of the same. Petitioner took the plea that in the application filed under Order 9 Rule 7 CPC prayer was made that she be allowed to cross-examine Balwant Singh and that prayer was declined vide impugned order and the same is liable to be set aside. On this point, reliance was placed upon the judgment rendered by the Hon'ble Apex court in ***Vijay Kumar Madan and Others v. R.N.Gupta technical Education Society and Others (2002)5 Supreme Court cases 30*** and ***Govt. of A.P. and Others v. J. Sridevi and Others (2002) 5 Supreme Court Cases 37***, whereby it was observed that while exercising power of putting the defendant on terms under Rule 7, the Court cannot pass an order which would have the effect of placing the defendant in a situation worse than what he would have been in if he had not applied under Rule 7.

While arguing on this point, learned counsel for the respondent submitted that the matter had come up before this Court in ***Balwant Singh and Another v. Saudagar Singh and Others (Regular First Appeal No. 1569 of 1978, decided on***

10.12.1990) and issues No. 1 to 5 were decided. Finding on issues No.1 to 5 were affirmed, whereas the matter remanded back to the trial Court with a direction to decide the issues afresh after giving opportunity to the plaintiff to formally prove Form A & C which had been produced along with C.M. No. 1378/CI of 1978. After remand of the matter, learned trial Court decided the matter in favour of the respondents.

Subsequently, the matter was before this Court in Civil Revision No. 5327 of 2012 titled "Balwant Singh and Another v. Saroj Kumar and Others" and this Court observed as under:-

"Besides it, counsel for the petitioners/plaintiffs pointed out that this Court vide judgment Annexure P-9 remanded the case to trial Court fresh decision on issue no.6 only. Accordingly it goes without saying that the trial Court shall proceed with the suit in accordance with judgment Annexure P-9.

Pending civil miscellaneous application, if any, is disposed of as infructuous."

The said order had already attained finality as the same was not challenged. In the light of that, present petition is without any merit and the same be dismissed.

Having considered the submissions made by learned counsel for the parties; having gone through the record of the case file; the impugned order and the judgments rendered by Hon'ble the Apex Court in cases **Vijay Kumar Madan and Others v. R.N.Gupta**

***technical Education Society and Others* (supra)** and ***Govt. of A.P. and Others v. J. Sridevi and Others* (supra)**, this Court is of the considered that the facts of the present case are entirely distinguishable from the facts of the cases mentioned above for the reasons detailed hereunder. In the light of order passed by this Court in Regular First Appeal No. 1569 of 1978 and order dated 20.9.2013 passed by this Court in Civil Revision No. 5327 of 2012, present petition is without any merit as the order passed by the Court below is strictly in accordance with the orders passed by this Court. In fact, under the garb of present petition, petitioner wants to get the order dated 24.4.1978 set aside whereby Surjit Kaur was proceeded against *ex parte*. The Court below has rightly observed that merely because of the fact that Surjit Kaur had sold the suit property in the year 1978 to Manjit Singh, who had sold it further to Surjit Rani in the year 2012 and the same is not a ground to set aside the *ex parte* order passed way back on 24.4.1978. That way petitioner cannot reopen the proceedings being carried out either by Surjit Kaur or her vendor Manjit Singh.

In view of above discussion, present petition is without any merit and the same stands dismissed.

(Shekher Dhawan)
Judge

April 28, 2016

"DK"